

AMENDED IN ASSEMBLY APRIL 27, 2011

AMENDED IN ASSEMBLY MARCH 14, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 361

Introduced by Assembly Member Huffman
(Principal coauthor: Assembly Member Blumenfield)
(Coauthor: Senator Leno)

February 14, 2011

An act to add Part 13 (commencing with Section 14600) to Division 3 of Title 1 of the Corporations Code, relating to benefit corporations.

LEGISLATIVE COUNSEL'S DIGEST

AB 361, as amended, Huffman. Benefit corporations.

Existing law, the General Corporation Law, authorizes and regulates the formation and governance of general corporations. The Nonprofit Corporation Law authorizes the formation and governance of nonprofit public benefit corporations, nonprofit mutual benefit corporations, and nonprofit religious corporations, and specifies the respective purposes for which those corporations may lawfully be formed. Existing law specifies the duties of corporate directors and the rights of shareholders. Existing law does not provide for the formation and governance of benefit corporations.

This bill would authorize and regulate the formation and governance of a new form of corporate entity known as a benefit corporation. The bill would also permit an existing general corporation to become a benefit corporation by amendment to its articles of incorporation, as specified, adopted by at least a minimum status vote, as defined, and

would permit a corporation to become a benefit corporation through a merger, as specified.

This bill would define “benefit corporation” to mean a corporation that has been organized under the General Corporation Law and has elected to become subject to the provisions of the bill, as specified. The bill would provide that a benefit corporation may be formed for the purpose of creating a general public benefit, defined as a material positive impact on society and the environment, taken as a whole, as ~~measured by~~ *assessed against* a 3rd-party standard, as defined, that satisfies certain requirements. The bill would also provide that a benefit corporation may identify one or more specific public benefits, as defined, as an additional purpose of the corporation, including, without limitation, providing low-income or underserved individuals or communities with beneficial products or services, promoting economic opportunity for individuals or communities beyond the creation of jobs in the ordinary course of business, preserving the environment, and improving human health.

This bill would require directors to consider the impacts of any action or proposed action upon specified considerations, including, among others, the shareholders and employees, and of customers who are beneficiaries of the general or specific public benefit purposes, and the environment, and would allow directors to consider the impacts of those actions on, among other things, the resources, intent, and conduct of any person seeking to acquire control of the benefit corporation.

~~This bill would require a benefit corporation to designate a benefit director, as defined, and would authorize a benefit corporation to designate a benefit officer, as defined. The bill would require the benefit officer, or, in the absence of a benefit officer, the benefit director, board of directors to prepare a specified statement relating to the public benefit purposes of the corporation. The bill would require the benefit corporation to prepare an annual benefit report to include, among other things, a statement indicating whether, in the board’s opinion, the benefit corporation failed to pursue its general public benefit and any specific public benefit, a description of the ways in which the benefit corporation pursued a general public benefit and any specific public benefit and those benefits, the extent to which those benefits were created, and the process and rationale for selecting the 3rd-party standard used to prepare the benefit reports, and would require the benefit corporation to file with the Secretary of State a copy of the~~

benefit report together with a filing fee in a specified amount to cover the reasonable regulatory costs associated with maintaining those filings.

This bill would include provisions governing the fiduciary duty and liability of an officer or director of a benefit corporation. The bill would provide that the duties of a director or officer, and the general, and any specific, public benefit purpose of a benefit corporation, may be enforced only in a benefit enforcement proceeding, as defined, that would be permitted to be commenced or maintained only as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Part 13 (commencing with Section 14600) is
2 added to Division 3 of Title 1 of the Corporations Code, to read:

3
4 PART 13. BENEFIT CORPORATIONS

5
6 CHAPTER 1. PRELIMINARY PROVISIONS

7
8 14600. (a) This part shall be applicable to all benefit
9 corporations.

10 (b) The existence of a provision of this part shall not of itself
11 create any implication that a contrary or different rule of law is or
12 would be applicable to a business corporation that is not a benefit
13 corporation. This part shall not affect any statute or rule of law
14 that is or would be applicable to a corporation that is not a benefit
15 corporation.

16 (c) The provisions of the General Corporation Law (Division
17 1 (commencing with Section 100)) shall apply to benefit
18 corporations, except where those provisions are in conflict with
19 or inconsistent with the provisions of this part.

20 14601. As used in this part:

21 (a) "Benefit corporation" means a corporation organized under
22 the General Corporation Law that has elected to become subject
23 to this part and whose status as a benefit corporation has not been
24 terminated as provided in this part.

25 ~~(b) "Benefit director" means the director designated as the~~
26 ~~benefit director of a benefit corporation as provided in subdivision~~
27 ~~(a) of Section 14621.~~

1 (e)

2 (b) “Benefit enforcement proceeding” means a claim or action
3 brought directly by a benefit corporation, or derivatively on behalf
4 of a benefit corporation, against a director or officer for either of
5 *relating to any of* the following:

6 (1) Failure to pursue the general public benefit purpose of the
7 benefit corporation or any specific public benefit purpose set forth
8 in its articles.

9 (2) Violation of a duty or standard of conduct imposed on a
10 director pursuant to this part.

11 (d) ~~“Benefit officer” means the officer of a benefit corporation,~~
12 ~~if any, designated as the benefit officer as provided in Section~~
13 ~~14623.~~

14 (3) *Failure of the benefit corporation to deliver or post an*
15 *annual benefit report as required by Section 14630.*

16 (e)

17 (c) “General public benefit” means a material positive impact
18 on society and the environment, taken as a whole, as ~~measured by~~
19 *assessed against* a third-party standard, from the business and
20 operations of a benefit corporation.

21 (f) ~~“Independent” means that a person has no material~~
22 ~~relationship with a benefit corporation or any of its subsidiaries.~~
23 ~~Serving as a benefit director or benefit officer does not, in itself,~~
24 ~~make a person not independent. A material relationship between~~
25 ~~a person and a benefit corporation or any of its subsidiaries shall~~
26 ~~be conclusively presumed to exist if any of the following apply:~~

27 (1) ~~The person is, or has been within the last three years, an~~
28 ~~employee of the benefit corporation or any of its subsidiaries, other~~
29 ~~than as a benefit officer.~~

30 (2) ~~An immediate family member of the person is, or has been~~
31 ~~within the last three years, an executive officer, other than a benefit~~
32 ~~officer, of the benefit corporation or any of its subsidiaries.~~

33 (3) ~~The person, or an association of which the person is a~~
34 ~~director, officer, or other manager or in which the person owns~~
35 ~~beneficially or of record 5 percent or more of the outstanding equity~~
36 ~~interests, owns beneficially or of record 5 percent or more of the~~
37 ~~outstanding shares of the benefit corporation.~~

38 (g)

39 (d) Subject to subdivision (k), “minimum status vote” means
40 that, in addition to any other approval or vote required by Division

1 1 (commencing with Section 100) or the articles of incorporation,
2 both of the following shall apply:

3 (1) The shareholders of every class or series shall be entitled to
4 vote on the corporate action regardless of any limitation stated in
5 the articles or bylaws on the voting rights of any class or series.

6 (2) The corporate action shall be approved by the vote of the
7 shareholders of each class or series entitled to cast at least
8 two-thirds of the votes that all shareholders of the class or series
9 are entitled to cast on that action.

10 ~~(h)~~

11 (e) “Specific public benefit” includes all of the following:

12 (1) Providing low-income or underserved individuals or
13 communities with beneficial products or services.

14 (2) Promoting economic opportunity for individuals or
15 communities beyond the creation of jobs in the ordinary course of
16 business.

17 (3) Preserving the environment.

18 (4) Improving human health.

19 (5) Promoting the arts, sciences, or advancement of knowledge.

20 (6) Increasing the flow of capital to entities with a public benefit
21 purpose.

22 (7) The accomplishment of any other particular benefit for
23 society or the environment.

24 ~~(i) Subject to subdivision (k), “subsidiary”~~

25 (f) “Subsidiary” of a person means an ~~association~~ entity in
26 which the person owns beneficially or of record 50 percent or more
27 of the outstanding equity interests. *For purposes of this definition,*
28 *a percentage of ownership in an entity shall be calculated as if all*
29 *outstanding rights to acquire equity interests in the entity had been*
30 *exercised.*

31 ~~(j)~~

32 (g) “Third-party standard” means a standard for defining,
33 reporting, and assessing overall corporate social and environmental
34 performance to which ~~both~~ all of the following apply:

35 (1) The standard is a comprehensive assessment of the impact
36 of the business and the business’s operations upon the ~~consideration~~
37 ~~listed in~~ *considerations listed in paragraphs (2) to (5), inclusive,*
38 *of subdivision (b) of Section 14620.*

39 (2) The standard is developed by an ~~organization that is~~
40 ~~independent of~~ *entity that has no material financial relationship*

1 *with the benefit corporation or any of its subsidiaries and that*
2 *satisfies both of the following requirements:*

3 (A) *Not more than one-third of the members of the governing*
4 *body of the ~~organization~~ ~~are representatives of either entity~~ are*
5 *representatives of any of the following:*

6 (i) ~~An association~~ *Associations* of businesses operating in a
7 specific industry, the performance of whose members is measured
8 by the standard.

9 (ii) *Businesses from a specific industry or an association of*
10 *businesses in that industry.*

11 (ii)

12 (iii) *Businesses whose performance is ~~measured by~~ assessed*
13 *against the standard.*

14 (B) ~~The ~~organization~~ entity~~ is not materially financed by an
15 association or business described in subparagraph (A).

16 (3) The standard is developed by ~~a person~~ *an entity* that does
17 both of the following:

18 (A) *Accesses necessary and appropriate expertise to assess*
19 *overall corporate social and environmental performance.*

20 (B) *Uses a balanced multistakeholder approach, including a*
21 *public comment period of at least 30 days to develop the standard.*

22 (4) All of the following information regarding the standard is
23 publicly available:

24 (A) *The criteria considered when measuring the overall social*
25 *and environmental performance of a business.*

26 (B) *The relative weightings assigned to the criteria described*
27 *in subparagraph (A).*

28 (C) *The identity of the directors, officers, any material owners,*
29 *and the governing body of the ~~organization~~ entity that developed,*
30 *and controls revisions to, the standard.*

31 (D) *The process by which revisions to the standard and changes*
32 *to the membership of the governing body described in*
33 *subparagraph (C) are made.*

34 (E) *An accounting of the sources of financial support for the*
35 *~~organization~~ entity, with sufficient detail to disclose any*
36 *relationships that could reasonably be considered to present a*
37 *potential conflict of interest.*

38 ~~(k) For purposes of the definitions of “independent” in~~
39 ~~subdivision (f) and “subsidiary” in subdivision (i), a percentage~~
40 ~~of ownership in an association shall be calculated as if all~~

1 ~~outstanding rights to acquire equity interests in the association had~~
2 ~~been exercised.~~

3 14602. A benefit corporation shall be formed in accordance
4 with Chapter 2 (commencing with Section 200) of Division 1
5 except that the articles shall also state that the corporation is a
6 benefit corporation.

7 14603. (a) A general corporation may become a benefit
8 corporation under this part by amending the corporation's articles
9 so that the articles contain a statement that the corporation is a
10 benefit corporation. The amendment shall not be effective unless
11 it is adopted by at least the minimum status vote. *If the amendment*
12 *is adopted, a shareholder of the corporation may, by complying*
13 *with Chapter 13 (commencing with Section 1300) of Division 1,*
14 *require the corporation to purchase at their fair market value the*
15 *shares owned by the shareholder which are dissenting shares as*
16 *defined in subdivision (b) of Section 1300 in accordance with the*
17 *procedures in that chapter.*

18 (b) If a corporation that is not a benefit corporation is a party
19 to a merger reorganization or is the acquired corporation in an
20 exchange reorganization, and the surviving corporation in the
21 reorganization is to be a benefit corporation, then the reorganization
22 shall not be effective unless the reorganization is adopted by the
23 corporation by at least the minimum status vote.

24 14604. (a) A benefit corporation may terminate its status as a
25 benefit corporation and cease to be subject to this part by amending
26 the corporation's articles to delete the provision required by Section
27 14602. The amendment shall not be effective unless the amendment
28 is adopted by at least the minimum status vote. *If the amendment*
29 *is adopted, a shareholder of the corporation may, by complying*
30 *with Chapter 13 (commencing with Section 1300) of Division 1,*
31 *require the corporation to purchase at their fair market value the*
32 *shares owned by the shareholder which are dissenting shares as*
33 *defined in subdivision (b) of Section 1300 in accordance with the*
34 *procedures in that chapter.*

35 (b) If a reorganization (*Section 181*) would have the effect of
36 terminating the status of a general corporation as a benefit
37 corporation, the reorganization shall not be effective unless the
38 reorganization is ~~adopted~~ *approved* by at least the minimum status
39 vote.

1 (c) If a benefit corporation is the converting corporation
2 (Section 1150) in a conversion (Section 161.9), the conversion
3 shall not be effective unless the conversion is approved by at least
4 the minimum status vote.

5 (d) A sale, lease, conveyance, exchange, transfer, or other
6 disposition of all or substantially all of the assets of a benefit
7 corporation, unless the transaction is in the usual and ordinary
8 course of business of the benefit corporation, shall not be effective
9 unless the transaction is approved by at least the minimum status
10 vote. If the transaction is approved, a shareholder of the
11 corporation may, by complying with Chapter 13 (commencing
12 with Section 1300) of Division 1, require the corporation to
13 purchase at their fair market value the shares owned by the
14 shareholder which are dissenting shares as defined in subdivision
15 (b) of Section 1300 in accordance with the procedures in that
16 chapter.

17 CHAPTER 2. CORPORATE PURPOSES

18
19
20 14610. (a) A benefit corporation shall have the purpose of
21 creating a general public benefit. This purpose is in addition to,
22 and may be a limitation on, the corporation's purpose under Section
23 206 and any specific purpose set forth in its articles in accordance
24 with subdivision (b).

25 (b) The articles of a benefit corporation may identify one or
26 more specific public benefits that shall be the purpose or purposes
27 of the benefit corporation to create in addition to its purposes under
28 Section 206 and subdivision (a). The identification of a specific
29 public benefit under this subdivision does not limit the obligation
30 of a benefit corporation to create any other general public benefit.

31 (c) The creation of general and specific public benefit as
32 provided in subdivisions (a) and (b) shall be deemed to be in the
33 best interests of the benefit corporation.

34 (d) A benefit corporation may amend; its articles to add, amend,
35 or delete the identification of a specific public benefit that shall
36 be the purpose of the benefit corporation to create. The amendment
37 shall not be effective unless the amendment is adopted by at least
38 the minimum status vote.

39 CHAPTER 3. ACCOUNTABILITY

40

1 14620. (a) *A director shall perform the duties of a director*
2 *including duties as a member of any committee of the board upon*
3 *which the director may serve, in good faith, in a manner the*
4 *director believes to be in the best interests of the benefit*
5 *corporation and with that care, including reasonable inquiry, as*
6 *an ordinarily prudent person in a like position would use under*
7 *similar circumstances.*

8 (b) In discharging their respective duties, and in considering
9 the best interests of the benefit corporation, the board of directors,
10 committees of the board, and individual directors of a benefit
11 corporation shall consider the impacts of any action or proposed
12 action upon all of the following:

13 (1) The shareholders of the benefit corporation.

14 (2) The employees and workforce of the benefit corporation
15 and its subsidiaries and suppliers.

16 (3) The interests of customers of the benefit corporation as
17 beneficiaries of the general or specific public benefit purposes of
18 the benefit corporation.

19 (4) Community and societal considerations, including those of
20 any community in which offices or facilities of the benefit
21 corporation or its subsidiaries or suppliers are located.

22 (5) The local and global environment.

23 (6) The short-term and long-term interests of the benefit
24 corporation, including benefits that may accrue to the benefit
25 corporation from its long-term plans and the possibility that these
26 interests may be best served by retaining control of the benefit
27 corporation rather than selling or transferring control to another
28 entity.

29 (7) The ability of the benefit corporation to accomplish its
30 general, and any specific, public benefit purpose.

31 ~~(b)~~

32 (c) In discharging their respective duties, the persons described
33 in subdivision (a) ~~may consider the impacts of any action or~~
34 ~~proposed action upon~~ (b) *may consider* any of the following:

35 (1) The resources, intent, and conduct, including past, stated,
36 and potential conduct, of any person seeking to acquire control of
37 the corporation.

38 (2) Any other pertinent factors or the interests of any other group
39 ~~that any of the persons described in subdivision (a) deems~~
40 ~~appropriate.~~ *person or group.*

1 (e)

2 (d) In discharging their respective duties, the persons described
3 in subdivision (a) shall not be required to give priority to *any*
4 *particular factor or* the interests of any particular person or group
5 referred to in subdivision ~~(a) or (b)~~ *over (b) or (c) over any other*
6 *factor or* the interests of any other person or group unless the
7 benefit corporation has stated its intention to give priority to
8 ~~interests related to~~ a specific public benefit purpose identified in
9 the articles.

10 ~~(d) In discharging its consideration of impacts as provided in~~
11 ~~subdivision (a), the board of directors, committees of the board,~~
12 ~~and individual directors may rely exclusively on their personal or~~
13 ~~collective understanding of those impacts or they may additionally~~
14 ~~rely on the information, opinions, reports, or statements specified~~
15 ~~in subdivision (b) of Section 309. The consideration of those~~
16 ~~impacts shall not constitute a violation of Section 309.~~

17 (e) A director shall have no liability for any of the following:

18 ~~(1) Any action taken as a director, if the director performed the~~
19 ~~duties of his or her office in compliance with Section 309 and this~~
20 ~~section.~~

21 (e) *In performing the duties of a director, a director shall be*
22 *entitled to rely on information, opinions, reports, or statements,*
23 *including financial statements and other financial data, in each*
24 *case prepared or presented by any of the following:*

25 (1) *One or more officers or employees of the benefit corporation*
26 *whom the director believes to be reliable and competent in the*
27 *matters presented.*

28 (2) *Counsel, independent accountants, or other persons as to*
29 *matters that the director believes to be within those persons'*
30 *professional or expert competence.*

31 (3) *A committee of the board upon which the director does not*
32 *serve, as to matters within its designated authority, which*
33 *committee the director believes to merit confidence, so long as, in*
34 *any of those cases, the director acts in good faith, after reasonable*
35 *inquiry when the need therefor is indicated by the circumstances*
36 *and without knowledge that would cause that reliance to be*
37 *unwarranted.*

38 ~~(2) Any~~

1 (f) A director shall not be liable for monetary damages under
2 this part for any failure of the benefit corporation to create a
3 general or specific public benefit.

4 (g) A person who performs the duties of a director in accordance
5 with this part shall not be liable for monetary damages for any
6 alleged failure to discharge the person's obligations as a director.

7 (h) In addition to the limitations provided in subdivisions (f)
8 and (g), the liability of a director for monetary damages may be
9 eliminated or limited in a benefit corporation's articles to the
10 extent provided in paragraph (10) of subdivision (a) of Section
11 204.

12 (i) A director shall not have a fiduciary duty to a person that is
13 a beneficiary of the general or specific public benefit purposes of
14 a benefit corporation arising from the status of the person as a
15 beneficiary.

16 (j) A director of a foreign corporation that is subject to Section
17 2115 shall not be subject to Section 309 and shall be subject
18 instead to this section if the director of the foreign corporation is
19 subject to duties under its articles of incorporation, bylaws, or the
20 law of its jurisdiction of incorporation similar to the duties of
21 directors under this section.

22 14621. (a) The board of directors of a benefit corporation shall
23 include one director who shall be designated the "benefit director"
24 and shall have, in addition to all of the powers, duties, rights, and
25 immunities of the other directors of the benefit corporation, the
26 powers, duties, rights, and immunities provided in this chapter.

27 (b) The benefit director shall be elected, and may be removed,
28 in the manner provided by Chapter 3 (commencing with Section
29 300) of Division 1, and shall be an individual who is independent.
30 The benefit director may serve as the benefit officer while also
31 serving as the benefit director. The articles or bylaws of a benefit
32 corporation may prescribe additional qualifications of the benefit
33 director not inconsistent with this subdivision.

34 (c) (1) The benefit director shall prepare, and the benefit
35 corporation shall include in its shall prepare for inclusion in the
36 annual benefit report to shareholders required by Section 14630,
37 a statement indicating whether, in the opinion of the benefit director
38 board of directors, the benefit corporation acted in accordance
39 with failed to pursue its general, and any specific, public benefit
40

1 purpose in all material respects during the period covered by the
2 report and whether the directors and officers complied with
3 Sections 14620 and 14622, respectively.

4 (2) If, in the opinion of the benefit director, the benefit
5 corporation or its directors or officers failed to act in accordance
6 with the standards described in paragraph (1), then the statement
7 of the benefit director shall include a description of the ways in
8 which the benefit corporation or its directors or officers failed to
9 act in accordance with those standards.

10 (d) The acts of an individual in the capacity of a benefit director
11 shall constitute for all purposes acts of that individual in the
12 capacity of a director of the benefit corporation.

13 (e) If a shareholders' agreement provides that the powers and
14 duties of the board of directors shall be exercised or performed by
15 the shareholders, then the bylaws of the benefit corporation shall
16 provide that one of the shareholders who performs the duties of a
17 director shall have the powers, duties, rights, and immunities of a
18 benefit director.

19 (f) Regardless of whether the bylaws of a benefit corporation
20 include a provision eliminating or limiting the personal liability
21 of directors as authorized by paragraph (10) of subdivision (a) of
22 Section 204, a benefit director shall not be personally liable for
23 any act or omission in the capacity of a benefit director unless the
24 act or omission constitutes self-dealing, willful misconduct, or a
25 knowing violation of law covered by the report.

26 (b) If, in the opinion of the board of directors, the benefit
27 corporation failed to pursue its general, and any specific, public
28 benefit purpose, the statement required by subdivision (a) shall
29 include a description of the ways in which the benefit corporation
30 failed to pursue its general, and any specific, public benefit
31 purpose.

32 14622. (a) Each officer of a benefit corporation shall consider
33 the interests and factors described in Section 14620 in the manner
34 provided in that section when either of the following applies:

- 35 (1) The officer has discretion to act with respect to a matter.
36 (2) It reasonably appears to the officer that the matter may have
37 a material effect on any of the following:
38 (A) The creation of a general or specific public benefit by the
39 benefit corporation.

1 (B) Any of the interests or factors referred to in subdivision (a)
2 (b) of Section 14620.

3 (b) The consideration by an officer of interests and factors in
4 the manner described in subdivision (a) shall not constitute a
5 violation of the duties of the officer.

6 (c) An officer shall not be ~~personally liable for monetary~~
7 ~~damages for either~~ *liable for monetary damages under this part*
8 *for any of the following:*

9 (1) Any action taken as an officer if the officer performed the
10 duties of the position in compliance with this section.

11 (2) Any failure of the benefit corporation to create a general or
12 specific public benefit.

13 (d) An officer shall not have a fiduciary duty to a person that is
14 a beneficiary of the general or specific public benefit purposes of
15 a benefit corporation arising from the status of the person as a
16 beneficiary.

17 ~~14623. (a) A benefit corporation may designate an officer as~~
18 ~~the “benefit officer” who shall have the authority to perform, and~~
19 ~~shall perform, the duties in the management of the benefit~~
20 ~~corporation relating to the purpose of the corporation to create a~~
21 ~~general or specific public benefit as may be provided by the bylaws~~
22 ~~or, in the absence of controlling provisions in the bylaws, as may~~
23 ~~be determined by resolutions or orders of the board of directors.~~

24 ~~(b) If a benefit corporation has a benefit officer, the duties of~~
25 ~~the benefit officer shall include preparing the benefit report required~~
26 ~~by Section 14630.~~

27 ~~14624. (a) The duties of a director or officer under this chapter,~~
28 ~~and the general and any specific public benefit purpose of a benefit~~
29 ~~corporation, may be enforced only in a benefit enforcement~~
30 ~~proceeding.~~

31 ~~14623. (a) No person may bring an action or assert a claim~~
32 ~~against a benefit corporation or its directors or officers with respect~~
33 ~~to the duties of directors and officers under this chapter or with~~
34 ~~respect to the general or any specific public benefit purpose of the~~
35 ~~benefit corporation under this chapter except in a benefit~~
36 ~~enforcement proceeding.~~

37 (b) A benefit enforcement proceeding may be commenced or
38 maintained only as follows:

39 (1) Directly by the benefit corporation.

40 (2) Derivatively by any of the following:

1 (A) A shareholder.

2 (B) A director.

3 (C) A person or group of persons that owns beneficially or of
4 record 5 percent or more of the equity interests in an ~~association~~
5 *entity* of which the benefit corporation is a subsidiary.

6 (D) Other persons as have been specified in the articles or
7 bylaws of the benefit corporation.

8 *(c) A benefit corporation shall not be liable for monetary*
9 *damages under this part for any failure of the benefit corporation*
10 *to create a general or specific public benefit.*

11 *(d) If the court in a benefit enforcement proceeding finds that*
12 *a failure to comply with this part was without justification, the*
13 *court may award an amount sufficient to reimburse the plaintiff*
14 *for the reasonable expenses incurred by the plaintiff, including*
15 *attorney's fees and expenses, in connection with the benefit*
16 *enforcement proceeding.*

17
18 CHAPTER 4. TRANSPARENCY
19

20 14630. (a) A benefit corporation shall deliver to each
21 shareholder an annual benefit report including all of the following:

22 (1) A narrative description of all of the following:

23 (A) *The process and rationale for selecting the third-party*
24 *standard used to prepare the benefit report.*

25 ~~(A)~~

26 (B) The ways in which the benefit corporation pursued a general
27 public benefit during the applicable year and the extent to which
28 that general public benefit was created.

29 ~~(B)~~

30 (C) The ways in which the benefit corporation pursued any
31 specific public benefit that the articles state it is the purpose of the
32 benefit corporation to create and the extent to which that specific
33 public benefit was created.

34 ~~(C)~~

35 (D) Any circumstances that have hindered the creation by the
36 benefit corporation of a general or specific public benefit.

37 (2) An assessment of the overall social and environmental
38 performance of the benefit corporation, prepared in accordance
39 with a third-party standard applied consistently with any application
40 of that standard in prior benefit reports or accompanied by an

1 explanation of the reasons for any inconsistent application. *The*
2 *assessment does not need to be audited or certified by a third party.*

3 ~~(3) The name of the benefit director and the benefit officer, if~~
4 ~~any, and the address to which correspondence to each of them may~~
5 ~~be directed.~~

6 ~~(4) The compensation paid by the benefit corporation during~~
7 ~~the applicable year to each benefit director.~~

8 ~~(5)~~

9 (3) The name of each person that owns 5 percent or more of the
10 outstanding shares of the benefit corporation, either beneficially,
11 to the extent known to the benefit corporation without independent
12 investigation, or of record.

13 ~~(6) The statement of the benefit director described in subdivision~~
14 ~~(e) of Section 14621.~~

15 ~~(7)~~

16 (4) *The statement required by Section 14621.*

17 (5) A statement of any connection between the entity that
18 established the third-party standard, or its directors, officers, or
19 material owners, and the benefit corporation, or its directors,
20 officers, and material owners, including any financial or
21 governance relationship that might materially affect the credibility
22 of the objective assessment of the third-party standard.

23 (b) The benefit report shall be sent annually to each shareholder
24 within 120 days following the end of the fiscal year of the benefit
25 corporation or at the same time that the benefit corporation delivers
26 any other annual report to its shareholders.

27 (c) A benefit corporation shall post its most recent benefit report
28 on the public portion of its Internet Web site, if any, except that
29 the compensation paid to directors and any financial or proprietary
30 information included in the benefit report may be omitted from
31 the benefit report as posted on the Internet Web site.

32 (d) Concurrently with the delivery of the benefit report to
33 shareholders pursuant to subdivision (b), the benefit corporation
34 shall deliver a copy of the benefit report to the Secretary of State
35 for filing, except that the compensation paid to directors and any
36 financial or proprietary information included in the benefit report
37 may be omitted from the benefit report as filed in accordance with
38 this subdivision. The Secretary of State shall charge a fee not to
39 exceed seventy dollars (\$70) for filing a benefit report to cover

1 the reasonable regulatory costs associated with maintaining those
2 filings.

3 *14631. All certificates representing shares of a benefit*
4 *corporation shall contain, in addition to any other statements*
5 *required by the General Corporation Law (Division 1 (commencing*
6 *with Section 100)), the following conspicuous language on the*
7 *face of the certificate:*
8 *“This entity is a benefit corporation organized under Part 13*
9 *(commencing with Section 14600) of Division 3 of Title 1 of the*
10 *California Corporations Code.”*